

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

E.K. WADE,

Plaintiff,

v.

ELAINE CHAO, et al.

Defendants.

No. C 08-00001 JSW

**ORDER RE PENDING MOTIONS**

On February 15, 2008, this case was reassigned to this Court. On February 25, 2008, pursuant to the parties' stipulation, the Court Ordered that this matter was to be consolidated with *Wade v. Chao, et al.*, 08-CV-00021-JSW. (Docket No. 23.) In that Order, the Court ordered that these two matters were to be consolidated under one case number, specifically 08-00001-JSW. The parties also agreed that all matters were to be filed under that case number. Plaintiff, however, continues to file pleadings in case 08-CV-00021-JSW. Accordingly, IT IS HEREBY ORDERED that all parties shall file their pleadings *only* only in case 08-CV-00001-JSW. In the event the Clerk receives documents filed in case 08-CV-00021-JSW, those pleadings shall be filed in case 08-CV-00001-JSW.

The Court also previously approved the parties' stipulation to extend the time in which the Defendants would be required to file a responsive pleading to Plaintiffs' complaints. On March 5, 2008, Plaintiff filed an Amended Verified Complaint in case 08-00001-JSW. (Docket No. 28.) On March 19, 2008, Defendants filed a motion to dismiss, which was noticed for hearing on April 25, 2008. (Docket No. 37.)

1 In that motion, Defendants move to dismiss the First Amended Complaint filed on  
2 March 5, 2008 in case 08-00001-JSW in its entirety, and also move to dismiss the Seventh and  
3 Eighth Causes of Action in the Complaint filed on January 3, 2008 in case 08-00021-JSW.

4 On March 20, 2008, the Court issued a briefing schedule, in which it required Plaintiff  
5 to file his opposition to Defendant's motion by April 4, 2008, and required Defendants to file a  
6 reply brief on April 11, 2008. The Court also continued the hearing to May 9, 2008. (Docket  
7 No. 39.) On March 28, 2008, Plaintiff filed an opposition to Defendants' motion to dismiss.  
8 (Docket No. 40.) That motion remains on calendar.

9 Thereafter, on April 1, 2008, Plaintiff filed a motion for summary judgment, or in the  
10 alternative, summary adjudication, in case 08-00021-JSW, and noticed it for hearing on May 9,  
11 2008. On April 2, 2008, Defendants filed an Ex Parte Motion Pursuant to Federal Rule of Civil  
12 Procedure 56(f), in which they ask the Court to strike Plaintiff's motion for summary judgment  
13 in case 08-CV-00021, on the ground that it is premature and that they will require discovery to  
14 meet the motion. Plaintiff opposes the motion. The Court, however, finds good cause to  
15 GRANT Defendant's request and shall deny the motion without prejudice to renewal at a later  
16 date. The Court notes that although it normally permits one summary judgment motion per  
17 party, the Court shall not count what it considers to be a premature motion against Plaintiff.  
18 Accordingly, the Clerk is directed to terminate docket number 47 in case 08-CV-00001-JSW  
19 and docket number 26 in case 08-CV-00021-JSW.

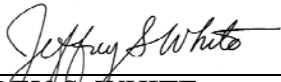
20 On April 4, 2008, Plaintiff filed a request for default in case 08-CV-00021, in which he  
21 requests that a default be entered against the Defendants because they moved to dismiss only  
22 the seventh and eighth claims for relief. Defendants oppose this request. Defendants  
23 opposition is well founded. *See* Fed. R. Civ. P. 12(a)(4). Accordingly, the Clerk is directed to  
24 deny Plaintiff's request for default in case 08-CV-00021. (*See* Docket No. 32.)

25 Finally, in his opposition to the Defendant's ex parte motion to deny the motion for  
26 summary judgment, Plaintiff refers to Defendants' allegedly "trifling, lazy-assed ways of  
27 conducting business." The Court expects *all* parties in this matter to conduct themselves with  
28

1 the utmost civility. The Court will not tolerate either party casting aspersions on one another  
2 and shall strike any briefs that contain such language in the future.

3 **IT IS SO ORDERED.**

4  
5 Dated: April 15, 2008

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

E.K. WADE,

Plaintiff,

v.

ELAINE CHAO et al,

Defendant.

Case Number: CV08-00001 JSW


**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 15, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

E. K. Wade  
542 North Civic Drive, Apt. D  
Walnut Creek, CA 94597

Dated: April 15, 2008

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk